EXHIBIT BB

Other Document #3

Document #3

(FOIA DOC 65)

PAGE 1

Case 1:07-cv-05435-LAP Document 74-13 Filed 06/25/2008 Page 4 of 166 } -POP-SECRET The Director of Central Intelligence Washington, D.C. 20505 4 June 2004 The National Security Advisor MEMORANDUM FOR: SUBJECT:

TOP SECRET

SUBJECT: (TC

3. (TS As you know, beginning in September 2002 the Justice Department authorized CIA in its discretion, to employ on selected HVDs

waterboard,

CIA has reserved use of these techniques to elicit ongoing threat information from the most hardcore, senior terrorist figures that have been captured—men such as Khalid Sheik Muhammad, Abu Zubaydeh,

key members of Congress have been briefed from the beginning—CIA informed the leadership of the Congressional Intelligence Committees of the existence and nature of the Program when it commenced in late 2002, in early 2003 when members of the leadership changed, and again in September 2003.

0000425

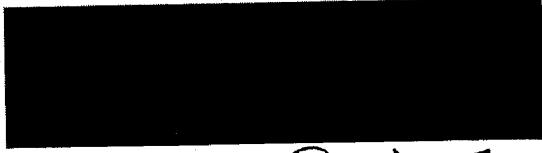
Document #3

(FOIA DOC 65)

PAGE 4



SUBJECT: · (TG



George J Tenet

0000427

A47-5

Document #3

(FOIA DOC 65)

PAGES 6-8

Other Document #7

Document #7

(**FOIA DOC 73**)

PAGES 1 TO 23

Case 1:07-cv-05435-LAP Document 74-13 Filed 06/25/2008 Page 11 of 166 ::• HAVE CERTIFIED INTERROGATORS EMPLOYED THE FOLLOWING STANDARD AND ENHANCED INTERROGATION METHODS WITH KHALID SHAYKH ((MUHLAMAD)) THE WATERBOARD

Document #7

(FOIA DOC 73)

PAGES 25 TO 43

Other Document #25

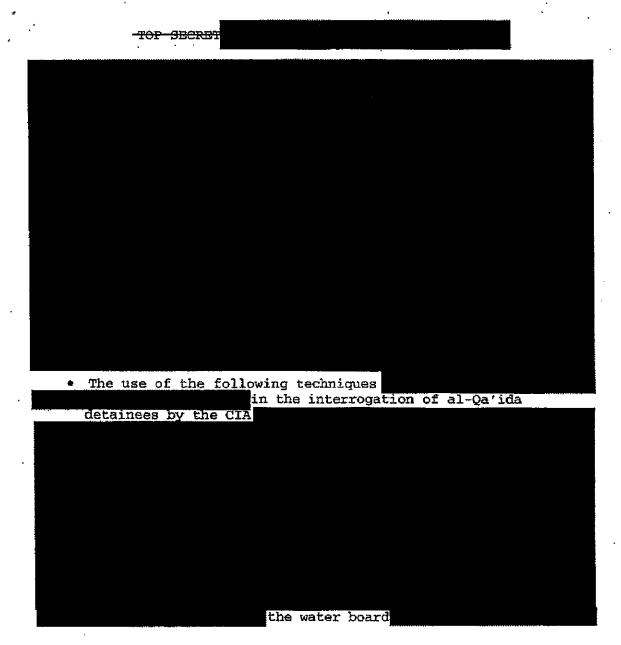
Case 1:07-cv-05435-LAP Document 74-13

Filed 06/25/2008 Page 14 of 166

Document #25

(FOIA DOC 64)

PAGES 1 TO 8



3

TOP SECRET

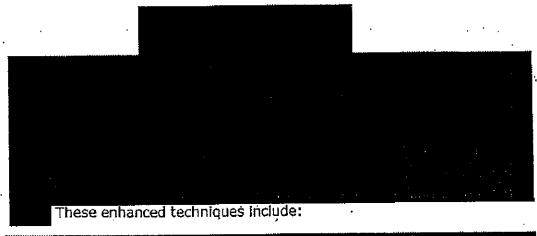
638-8

Other Document #29

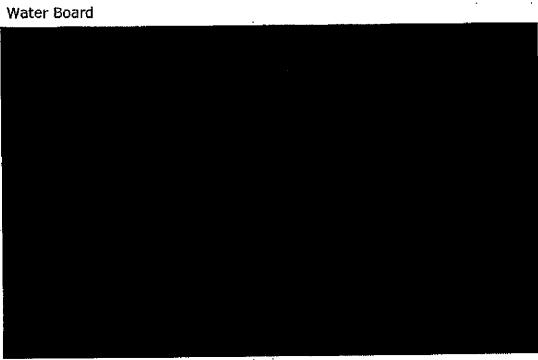
Document #29

(FOIA DOC 90)

PAGES 1 TO 17





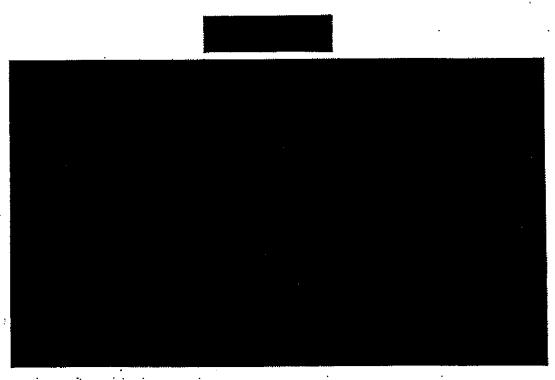


15-1442-18

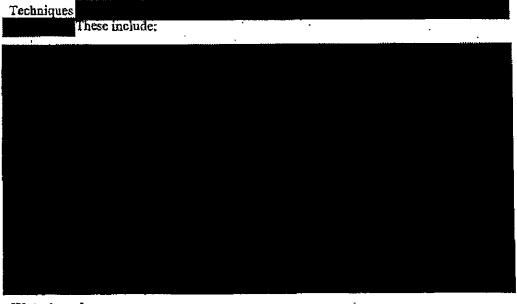
Document #45

(FOIA DOC 92)

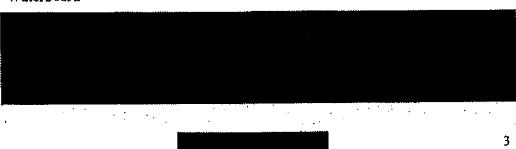
PAGES 1 TO 2



Enhanced Techniques



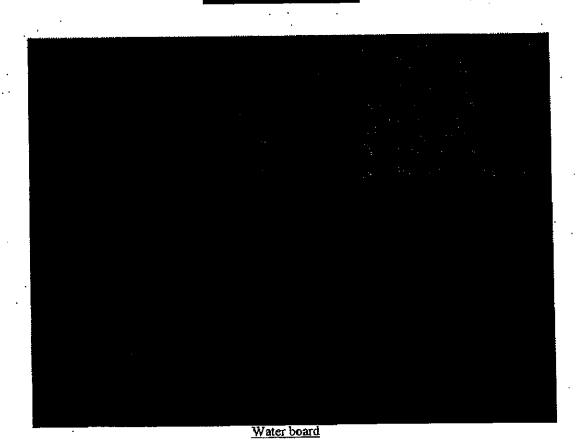
Waterboard

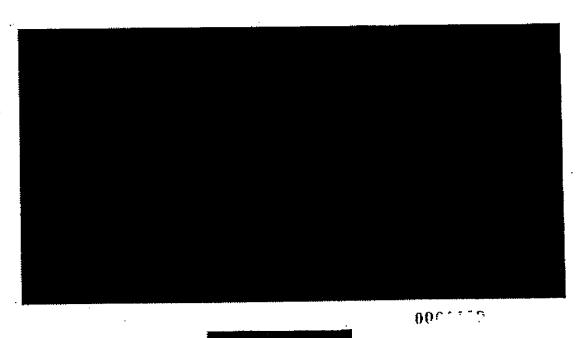


Document #45

(FOIA DOC 92)

PAGES 4 TO 7





R

Document #45

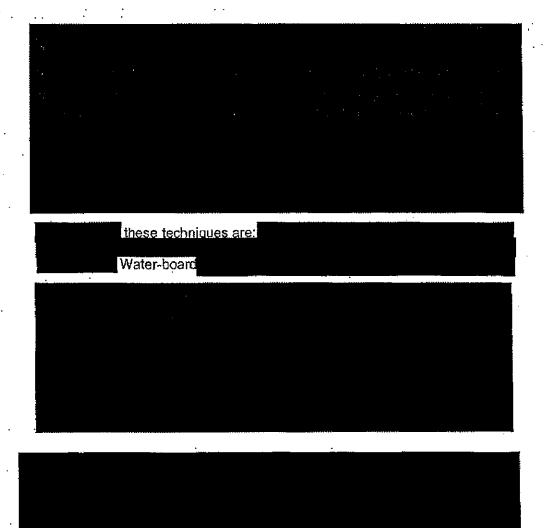
(FOIA DOC 92)

PAGES 9 TO 11

Other Document #65

Document #65

(FOIA DOC 86)



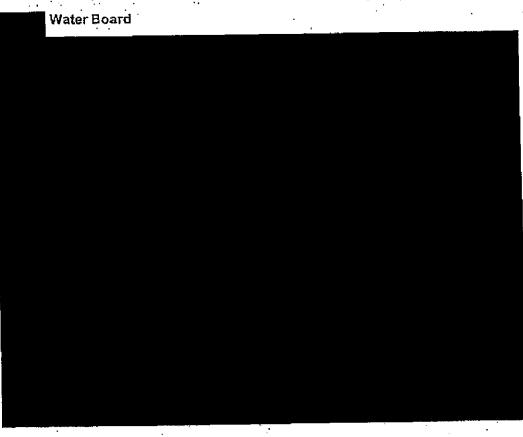
10 07215-10 Case 1:07-cv-05435-LAP

Document #65

(FOIA DOC 86)

PAGES 11 TO 13





07.215-14

Case 1:07-cv-05435-LAP

Document 74-13

Filed 06/25/2008

Page 30 of 166

Document #65

(FOIA DOC 86)

PAGES 15 TO 38

Filed 06/25/2008

Page 31 of 166

Document #65

(FOIA DOC 86)

PAGES 19 TO 37

Other Document #45

Other Document #67

These techniques are: Water-board 0000250

17014-1

Case 1:07-cv-05435-LAP

Document #67

(FOIA DOC 40)

PAGES 2 TO 4

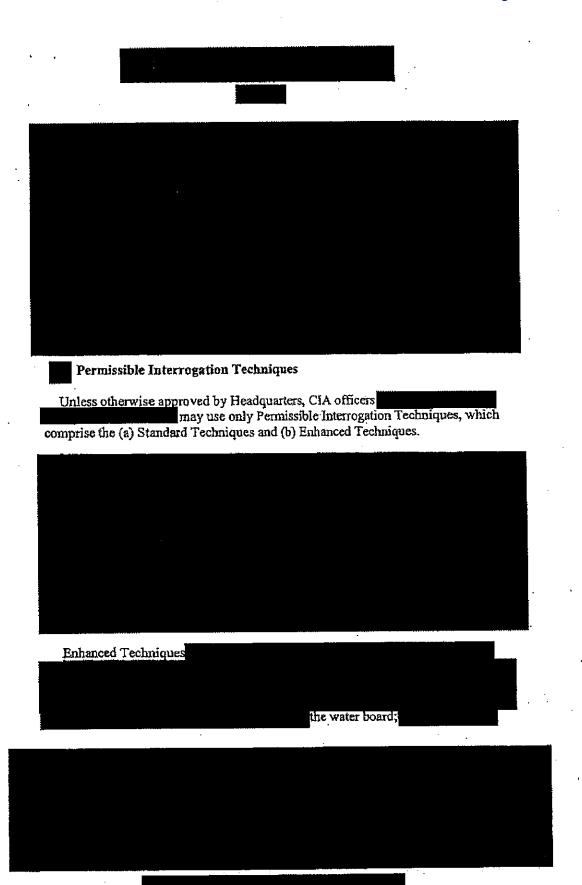
Water Board

0000254

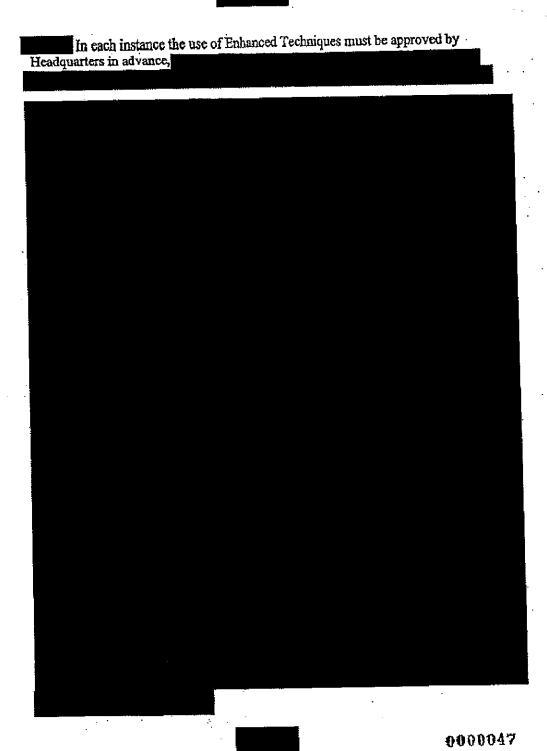
A-114-5

(FOIA DOC 4)

PAGE 1



CTCL 134-1



(FOIA DOC 4)

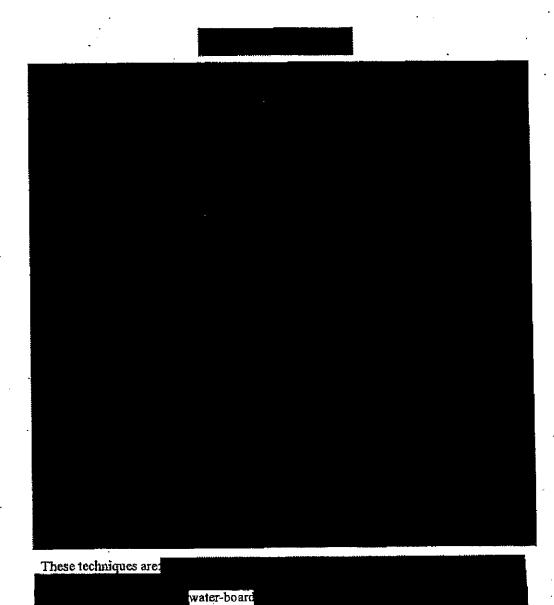
PAGES 4 TO 8

Case 1:07-cv-05435-LAP

Document #87

(FOIA DOC 8)

PAGES 1 TO 13



Case 1:07-cv-05435-LAP

Document 74-13

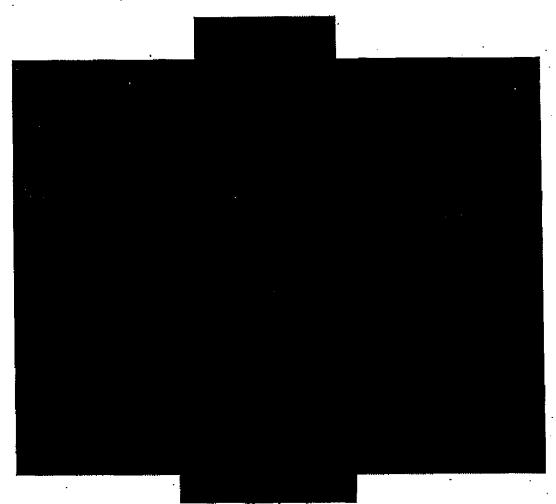
Filed 06/25/2008

Page 45 of 166

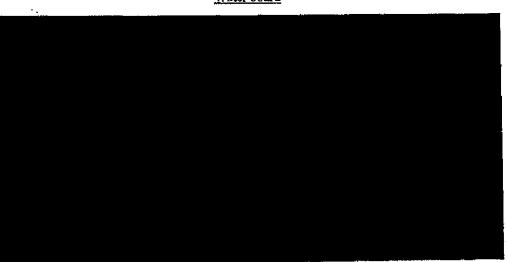
Document #87

(FOIA DOC 8)

PAGES 15 TO 17



Water board



0000099

Case 1:07-cv-05435-LAP

Document #87

(**FOIA DOC 8**)

PAGES 19 TO 22

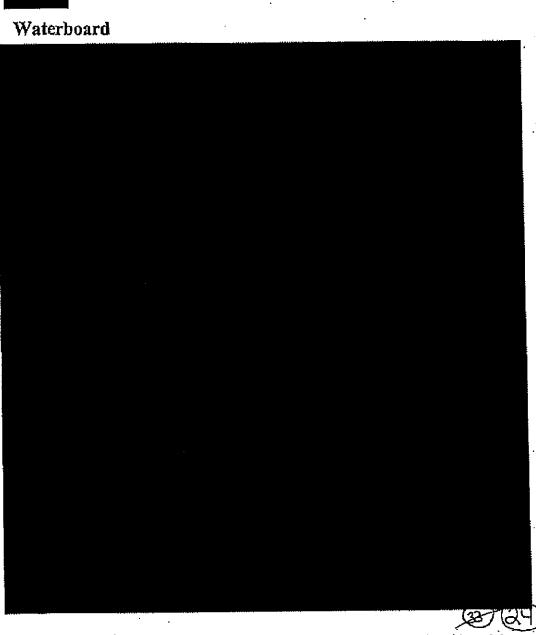
Document #101

Page 50 of 166

(FOIA DOC 22)

PAGES 2 TO 3

Case 1:07-cv-05435-LAP Document 74-13 Filed 06/25/2008 Page 52 of 166



(FOIA DOC 84)

PAGES 1 TO 13

Page 55 of 166 Filed 06/25/2008 These techniques are: Water-board

0000915

AT1154-14

Filed 06/25/2008

Page 56 of 166

Document #119

(FOIA DOC 84)

PAGES 15 TO 42

Denied in Full

Ġ

-00128

00129

MEMORANDUM FOR:

Deputy Director for Operations

Director, DCI Counterterrorist Center

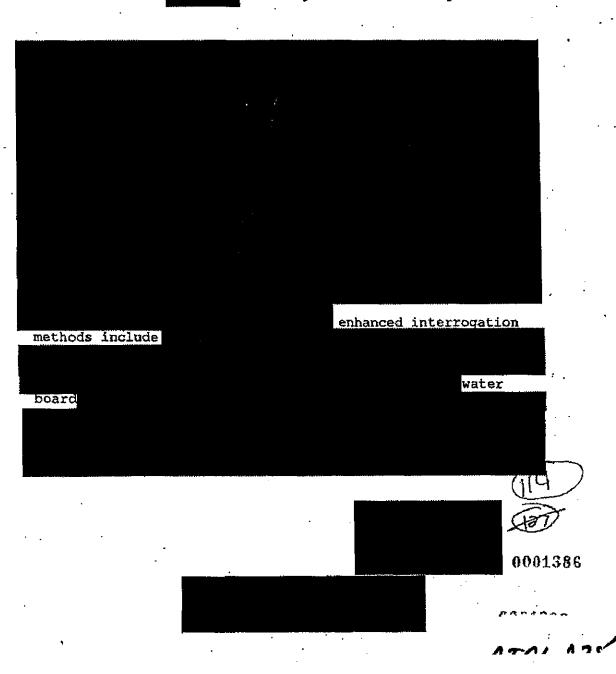
Senior Deputy General Counsel

FROM:

Deputy Director of Central Intelligence

SUBJECT:

Interrogation of Abu Zubaydah



(FOIA DOC 114)

PAGE 2

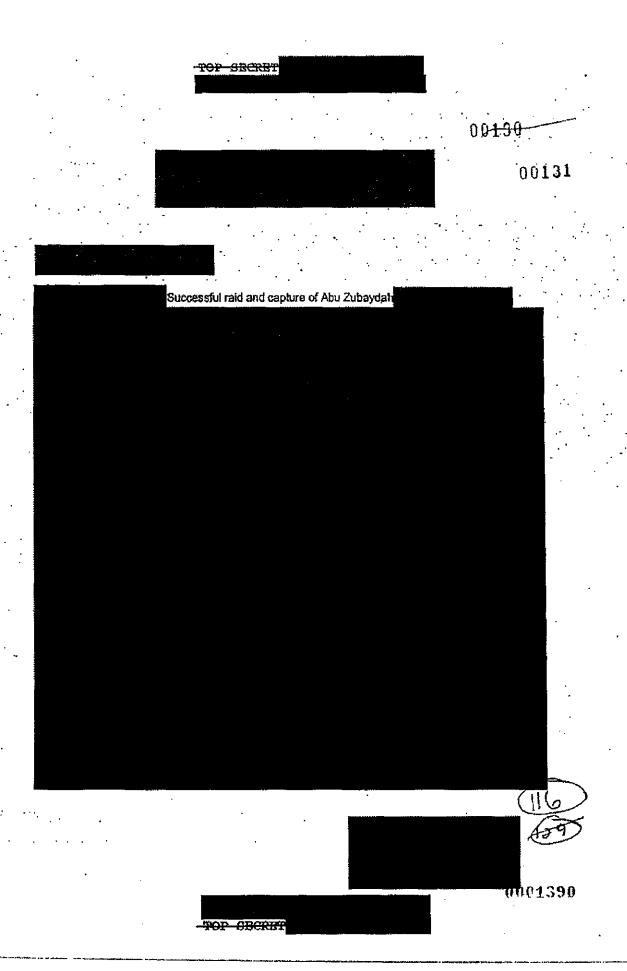


Approval. Accordingly, in view of the grave danger to the United States and its citizens,

have approved the implementation of the enhanced interrogation techniques described above.

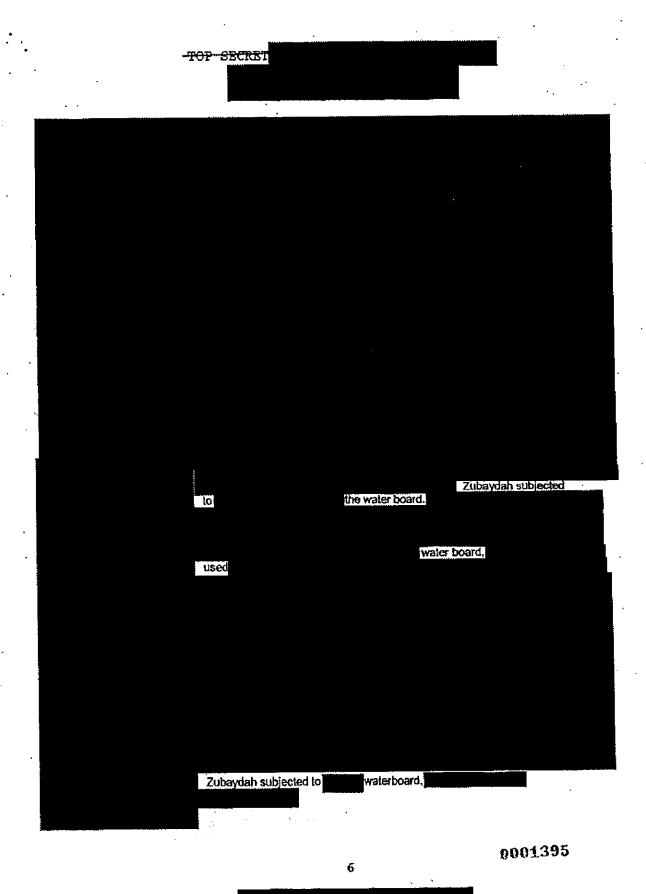
0001388

I



(FOIA DOC 116)

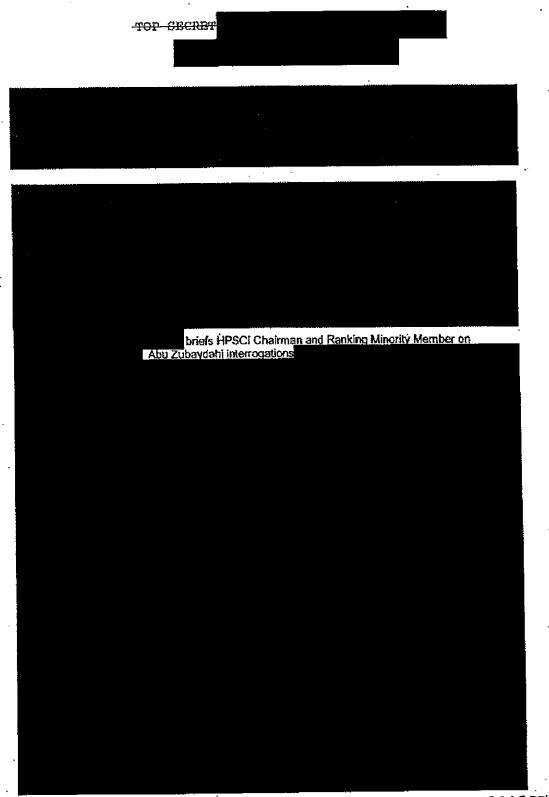
PAGES 2 TO 5

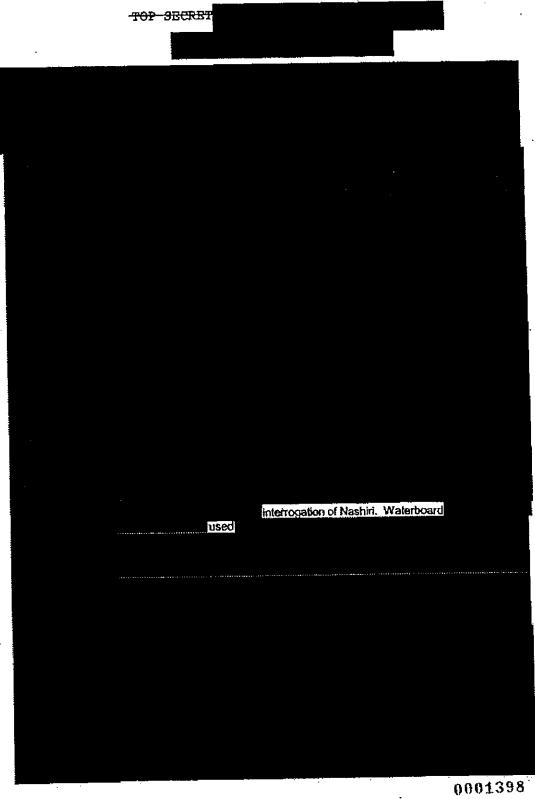


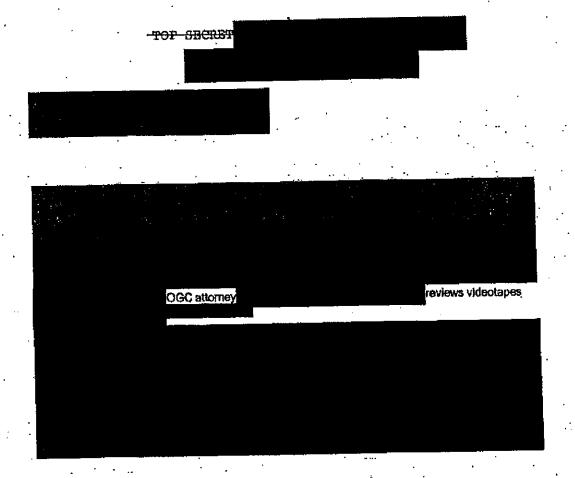
TOP SECRET

(FOIA DOC 116)

PAGE 7





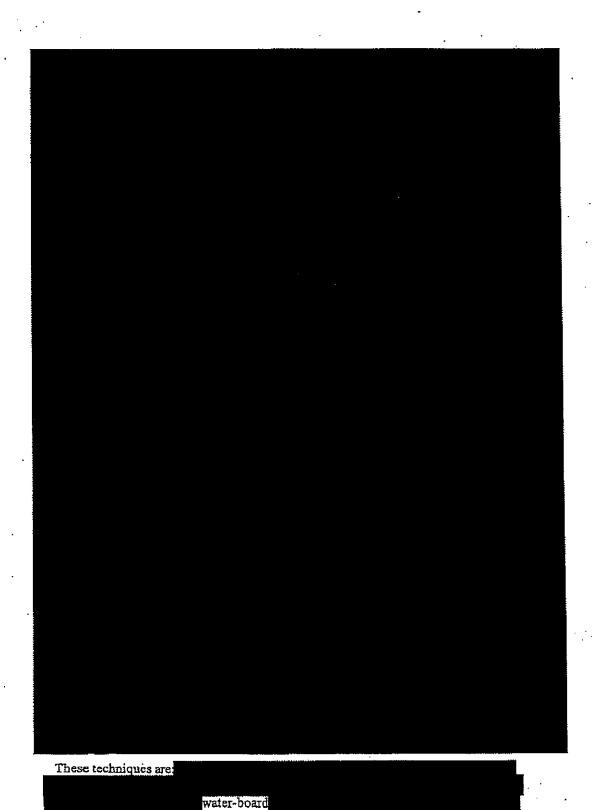


Case 1:07-cv-05435-LAP

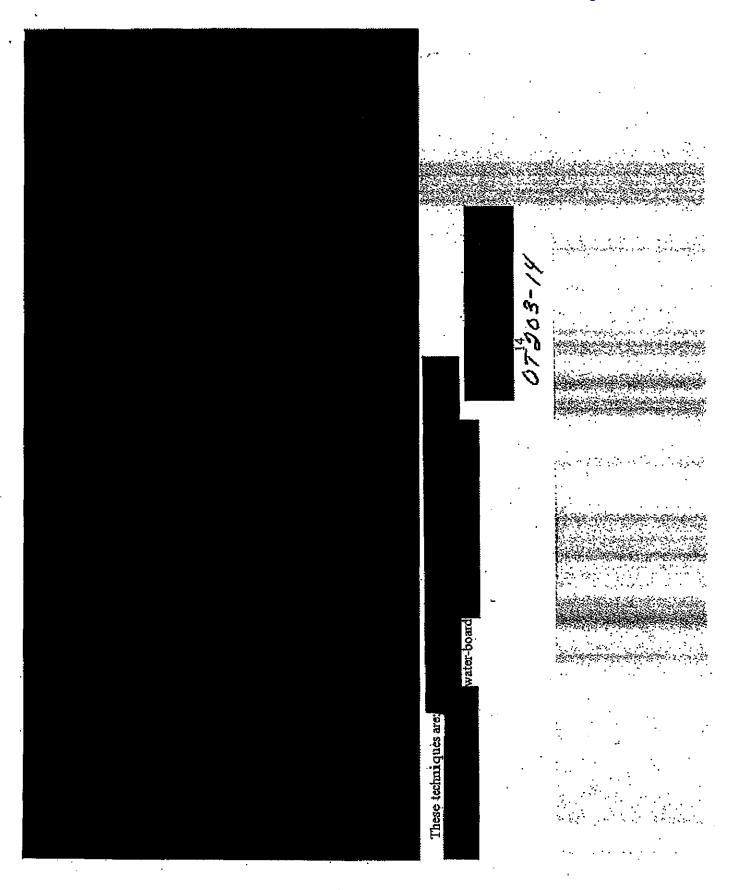
Document #169

(FOIA DOC 169)

PAGES 1 TO 13



مد. هـ بد4ليدير



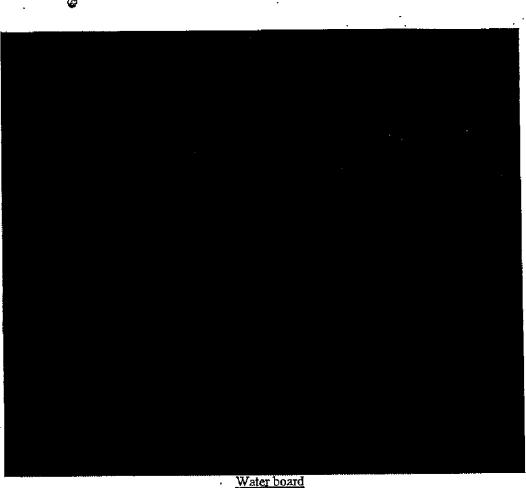
Case 1:07-cv-05435-LAP

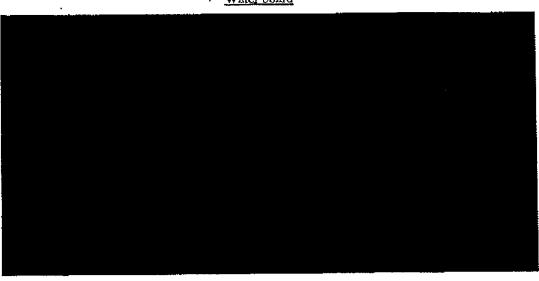
Filed 06/25/2008 Page 73 of 166

Document #169

(FOIA DOC 169)

PAGES 15 TO 17





Document #169

(FOIA DOC 169)

PAGES 19 TO 22

Interview Report #103

·

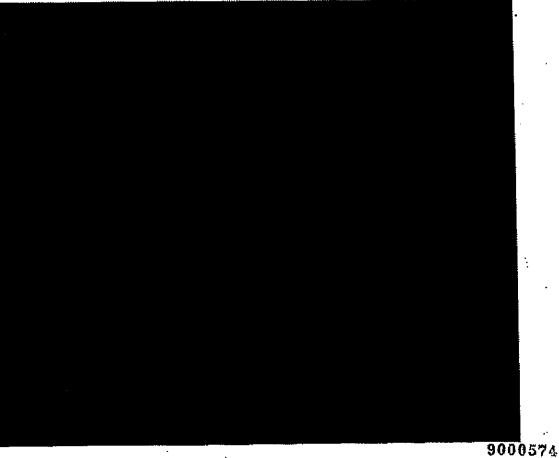
5 September 2003



INTERVIEW REPORT

INTERVIEWEE: Scott W. Muller

(U) Review of Interrogations for Counterterrorism Purposes



3000374

I118-1

INTERVIEWEE: Scott W. Muller

· į

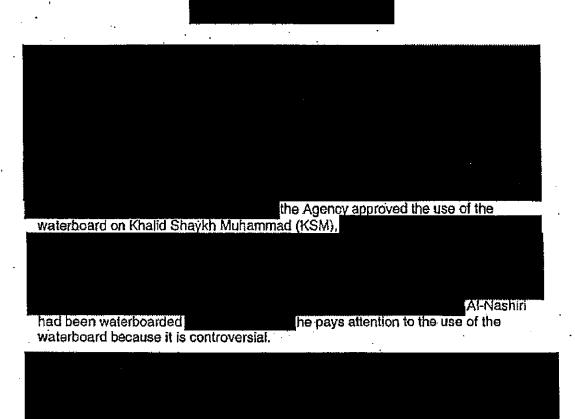


got a report from the OGC Attorney who had reviewed the videotapes.

9000575

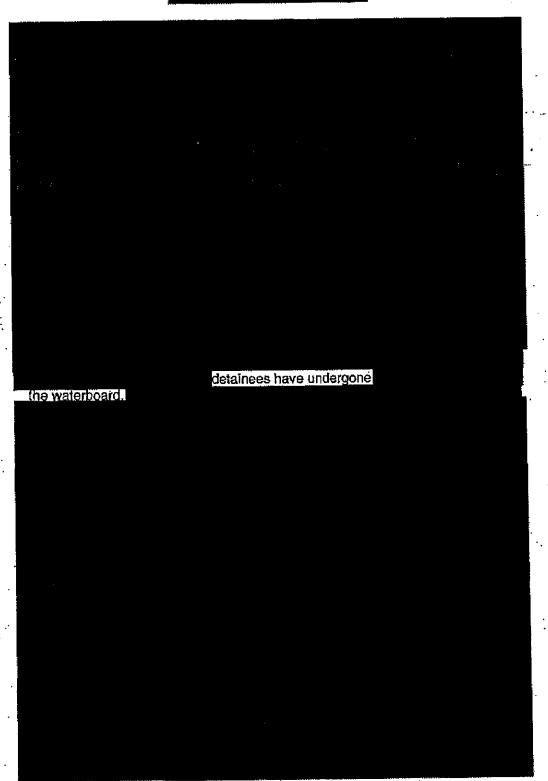
TOP SECRET

I 118-2



9000576 IU8-3

3



9000577

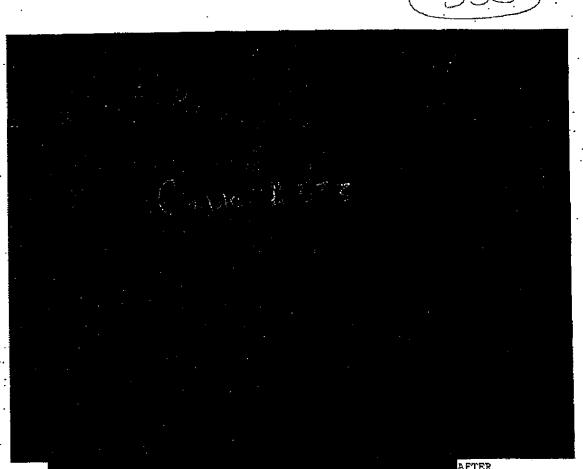
I118-4

Document #103

(FOIA DOC 103)

PAGES 5 TO 25

Cable #333



UNDERGOING. APPROVED TECHNIQUES INCLUDING THE WATER
BOARD, { (ABU ZUBAYDAH).}

SESSIONS INVOLVED USE OF THE WATER BOARD,

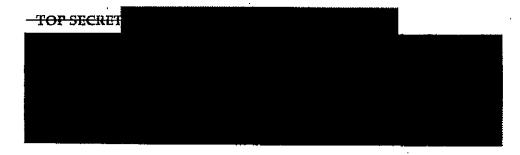
7001039

05649-1

Document #333

(FOIA DOC 333)

PAGE 2



SPECIAL REVIEW



COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001 - OCTOBER 2003)

7 May 2004

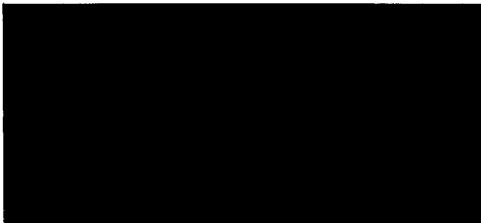


TOP SECRET

TABLE OF CONTENTS

Page
INTRODUCTION1
SUMMARY2
BACKGROUND9
DISCUSSION11
GENESIS OF POST 9/11 AGENCY DETENTION AND INTERROGATION ACTIVITIES
THE CAPTURE OF ABU ZUBAYDAH AND DEVELOPMENT OF EITS12
DOJ LEGAL ANALYSIS16
Notice to and consultation with Executive and Congressional officials23
Videotapes of Interrogations36

TOP SECRE



Waterboard Technique......44

ii

TOP SECRET

·
Effectiveness85
POLICY CONSIDERATIONS AND CONCERNS REGARDING THE DETENTION
AND INTERROGATION PROGRAM91
Policy Considerations92
ENDGAME95
CONCLUSIONS100
RECOMMENDATIONS106
APPENDICES
A. Procedures and Resources
B. Chronology of Significant Events

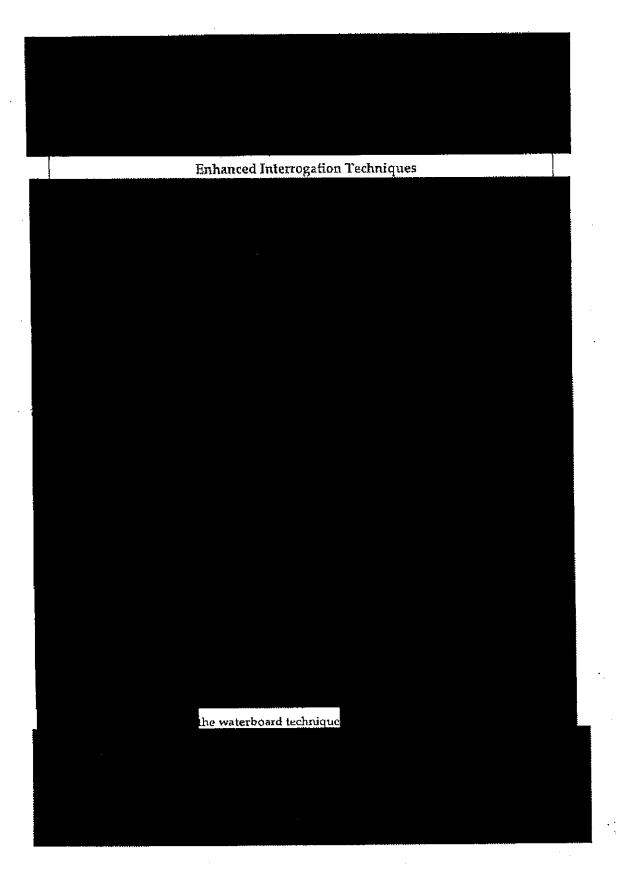
SPECIAL REVIEW

TABLE OF CONTENTS PAGE IV

Denied in Full

SPECIAL REVIEW

PAGES 1 TO 14



DOI LEGAL ANALYSIS

36. (TS

The ensuing legal opinions focus on the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (Torture Convention),15 especially as implemented in the U.S. criminal code, 18 U.S.C. 2340-2340A.

37. (U//FOUO) The Torture Convention specifically prohibits "torture," which it defines in Article 1 as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctión. [Emphasis added.]

Article 4 of the Torture Convention provides that states party to the Convention are to ensure that all acts of "torture" are offenses under their criminal laws. Article 16 additionally provides that each state party "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to acts of torture as defined in Article 1."

^{15 (}U//FOUO) Adopted 10 December 1984, S. Treaty Doc. No. 100-20 (1988) 1465 U.N.T.S. 85 (entered into force 26 June 1987). The Torture Convention entered into force for the United States on 20 November 1994.

38. (U//FOUO) The Torture Convention applies to the United States only in accordance with the reservations and understandings made by the United States at the time of ratification. As explained to the Senate by the Executive Branch prior to ratification:

Article 16 is arguably broader than existing U.S. law. The phrase "cruel, inhuman or degrading treatment or punishment" is a standard formula in international instruments and is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. To the extent the phrase has been interpreted in the context of those agreements, "cruel" and "inhuman" treatment or punishment appears to be roughly equivalent to the treatment or punishment barred in the United States by the Fifth, Eighth and Fourteenth Amendments. "Degrading" treatment or punishment, however, has been interpreted as potentially including treatment that would probably not be prohibited by the U.S. Constitution. [Citing a ruling that German refusal to recognize individual's gender change might be considered "degrading" treatment.] To make clear that the <u>United States construes the phrase to be</u> coextensive with its constitutional guarantees against cruel, unusual; and inhumane treatment, the following understanding is recommended:

"The United States understands the term 'cruel, inhuman or degrading treatment or punishment,' as used in Article 16 of the Convention, to mean the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States." [Emphasis added.]

^{16 (}U) Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980). The United States is not a party to the Vienna Convention on treaties, but it generally regards its provisions as customary international law.

39. (U//FOUO) In accordance with the Convention, the United States criminalized acts of torture in 18 U.S.C. 2340A(a), which provides as follows:

Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

The statute adopts the Convention definition of "torture" as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." "Severe physical pain and suffering" is not further defined, but Congress added a definition of "severe mental pain or suffering:"

[T]he prolonged mental harm caused by or resulting from-

- (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
- (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (C) the threat of imminent death; or
- (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality....¹⁹

These statutory definitions are consistent with the understandings and reservations of the United States to the Torture Convention.

^{18 (}U//FOUO) 18 U.S.C. 2340(1).

^{19 (}U//FOUO) 18 U.S.C. 2340(2).

40. (U//FOUO) DoJ has never prosecuted a violation of the torture statute, 18 U.S.C. §2340, and there is no case law construing its provisions.

issues under U.S. and international law to DoJ's OLC in the summer of 2002 and received a preliminary summary of the elements of the An unclassified 1 August 2002

OLC legal memorandum set out OLC's conclusions regarding the proper interpretation of the torture statute and concluded that "Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering whether mental or physical." Also, OLC stated that the acts must be of an "extreme nature" and that "certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture." Further describing the requisite level of intended pain, OLC stated:

Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.²¹

OLC determined that a violation of Section 2340 requires that the infliction of severe pain be the defendant's "precise objective." OLC also concluded that necessity or self-defense might justify interrogation methods that would otherwise violate Section 2340A.²² The August 2002 OLC opinion did not address whether any other provisions of U.S. law are relevant to the detention, treatment, and interrogation of detainees outside the United States.²³

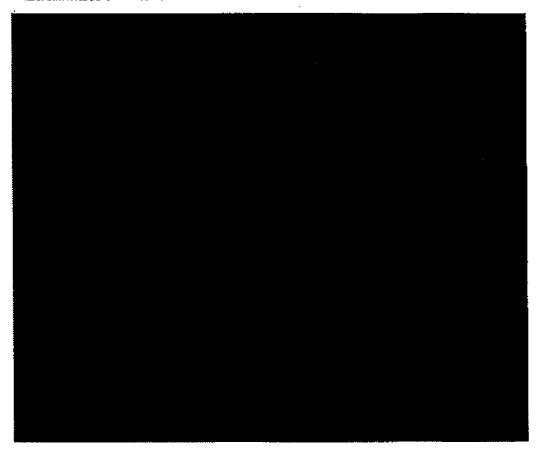
^{20 (}U//FOUO) Legal Memorandum, Re: Standards of Conduct for Interrogation under 18 U.S.C. 2340-2340A (1 August 2002).

^{21 (}U//FOUO) Ibid., p. 1.

²² (U//FOUO) Ibid., p. 39.

^{23 (}U//FOUO) OLC's analysis of the torture statute was guided in part by judicial decisions under the Torture Victims Protection Act (TVPA) 28 U.S.C. 1350, which provides a tort remedy for victims of torture. OLC noted that the courts in this context have looked at the entire course

41. (U//FOUO) A second unclassified 1 August 2002 OLC opinion addressed the international law aspects of such interrogations.²⁴ This opinion concluded that interrogation methods that do not violate 18 U.S.C. 2340 would not violate the Torture Convention and would not come within the jurisdiction of the International Criminal Court.



of conduct, although a single incident could constitute torture. OLC also noted that courts may be willing to find a wide range of physical pain can rise to the level of "severe pain and suffering." Ultimately, however, OLC concluded that the cases show that only acts "of an extreme nature have been redressed under the TVPA's civil remedy for torture." White House Counsel Memorandum at 22 - 27.

24 (U//FOUO) OLC Opinion by John C. Yoo, Deputy Assistant Attorney General, OLC (1 August 2002).

SPECIAL REVIEW

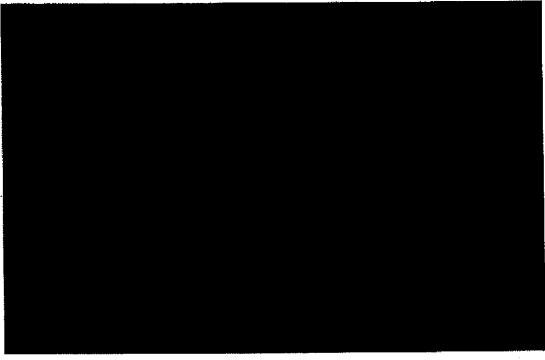
PAGES 21 TO 22



45. (TS

The DCI

briefed appropriate senior national security and legal officials on the proposed EITs. In the fall of 2002, the Agency briefed the leadership of the Congressional Intelligence Oversight Committees on the use of both standard techniques and EITs.



つつ

PAGES 24 TO 35

interrogators administered the waterboard to
Al-Nashiri

Videotapes of Interrogations

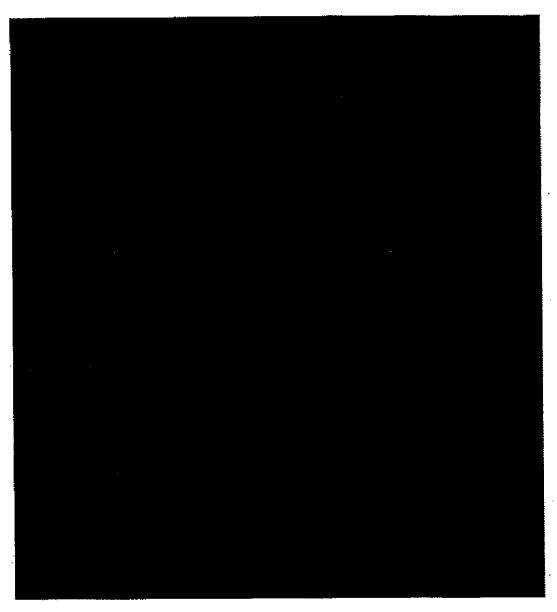
decided to videotape the interrogation sessions.

An OGC attorney reviewed the videotapes

78. (TS)
OIG reviewed the videotapes
in May 2003

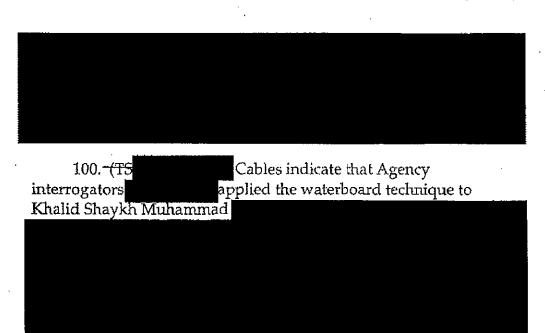
SPECIAL REVIEW

PAGES 37 TO 43



Waterboard Technique

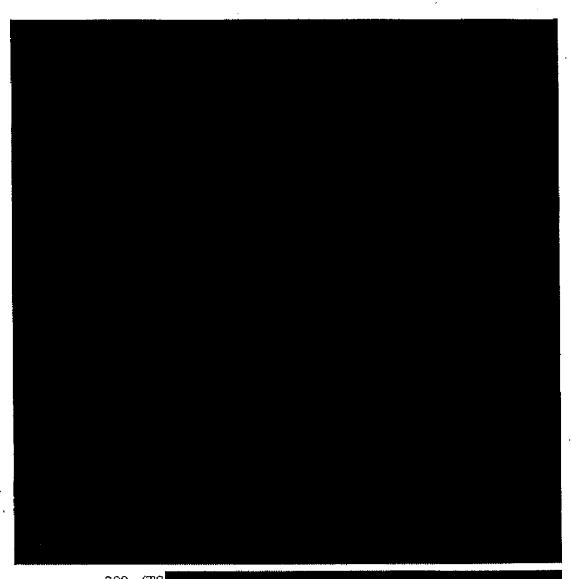
99. (TS
interrogators used the waterboard on Khalid Shaykh Muhammad





45

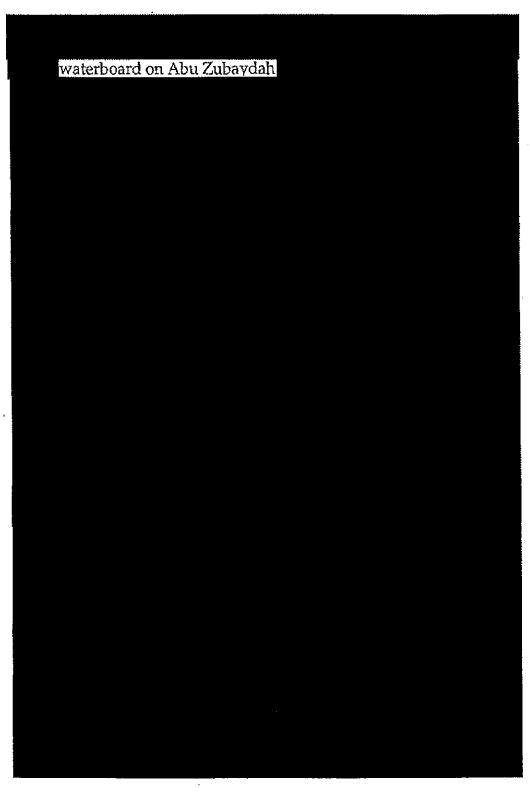
TOP SECRET



209. (TS waterboard session of Abu Zubaydah.

84

TOP SECRET



85

SPECIAL REVIEW

PAGES 86 TO 89

222. (TS The waterboard has been used on three detainees: Abu Zubaydah, Al-Nashiri, and Khalid Shaykh Muhammad.

223. (TS

Interrogators

applied the waterboard to Abu Zubaydah

TOP SECRET 225. (TS Khalid Shaykh Muhammad received applications of the waterboard

TOP SECRET

Policy Considerations

227. (U//FOUO) Throughout its history, the United States has been an international proponent of human rights and has voiced opposition to torture and mistreatment of prisoners by foreign countries. This position is based upon fundamental principles that are deeply embedded in the American legal structure and jurisprudence. The Fifth and Fourteenth Amendments to the U.S. Constitution, for example, require due process of law, while the Eighth Amendment bars "cruel and unusual punishments."

228. (U//FOUO) The President advised the Senate when submitting the Torture Convention for ratification that the United States would construe the requirement of Article 16 of the Convention to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture" as "roughly equivalent to" and "coextensive with the Constitutional guarantees against cruel, unusual, and inhumane treatment."81 To this end, the United States submitted a reservation to the Torture Convention stating that the United States considers itself bound by Article 16 "only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th, 8th and/or 14th Amendments to the Constitution of the United States." Although the Torture Convention expressly provides that no exceptional circumstances whatsoever, including war or any other public emergency, and no order from a superior officer, justifies torture, no similar provision was included regarding acts of "cruel, inhuman or degrading treatment or punishment."

^{81 (}U//FOUO) See Message from the President of the United States Transmitting the Convention Against Toxture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Sen. Treaty Doc. 100-20, 100th Cong., 2d Sess., at 15, May 23, 1988; Senate Committee on Foreign Relations, Executive Report 101-30, August 30, 1990, at 25, 29, quoting summary and analysis submitted by President Ronald Reagan, as revised by President George H.W. Bush.

229. (U//FOUO) Annual U.S. State Department Country Reports on Human Rights Practices have repeatedly condemned harsh interrogation techniques utilized by foreign governments. For example, the 2002 Report, issued in March 2003, stated:

Document 74-13

[The United States] have been given greater opportunity to make good on our commitment to uphold standards of human dignity and liberty . . . [N]o country is exempt from scrutiny, and all countries benefit from constant striving to identify their weaknesses and improve their performance [T]he Reports serve as a gauge for our international human rights efforts, pointing to areas of progress and drawing our attention to new and continuing challenges.

In a world marching toward democracy and respect for human rights, the United States is a leader, a partner and a contributor. We have taken this responsibility with a deep and abiding belief that human rights are universal. They are not grounded exclusively in American or western values. But their protection worldwide serves a core U.S. national interest.

The State Department Report identified objectionable practices in a variety of countries including, for example, patterns of abuse of prisoners in Saudi Arabia by such means as "suspension from bars by handcuffs, and threats against family members, . . . [being] forced constantly to lie on hard floors [and] deprived of sleep " Other reports have criticized hooding and stripping prisoners naked.

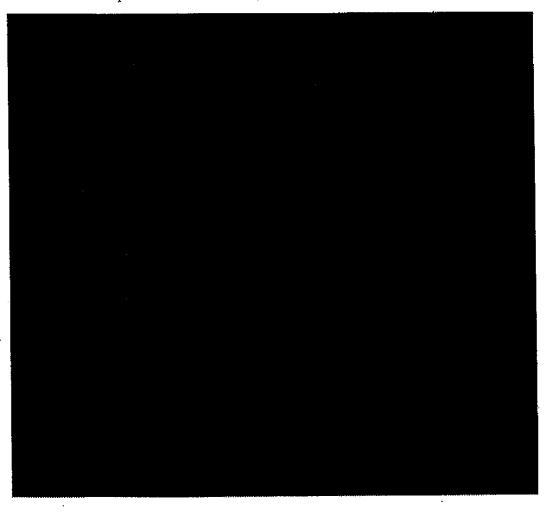
230. (U//FOUO) In June 2003, President Bush issued a statement in observance of "United Nations International Day in Support of Victims of Torture." The statement said in part:

The United States declares its strong solidarity with torture victims across the world. Torture anywhere is an affront to human dignity everywhere. We are committed to building a world where human rights are respected and protected by the rule of law.

Freedom from torture is an inalienable human right Yet torture continues to be practiced around the world by rogue regimes whose cruel methods match their determination to crush the human spirit

Notorious human rights abusers . . . have sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors

The United States is committed to the worldwide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment....



PAGES 95 TO 109

Case 1:07-cv-05435-LAP Document 74

Document 74-13 Filed 06/25/2008

Page 113 of 166

Appendix A

Filed 06/25/2008

TOP SECRE

PROCEDURES AND RESOURCES

- A team, led by the Deputy Inspector General, and comprising the Assistant Inspector General for Investigations, the Counsel to the Inspector General, a senior Investigations Staff Manager, three Investigators, two Inspectors, an Auditor, a Research Assistant, and a Secretary participated in this Review.
- OIG tasked relevant components for all information regarding the treatment and interrogation of all individuals detained by or on behalf of CIA after 9/11. Agency components provided OIG with over 38,000 pages of documents. OIG conducted over 100 interviews with individuals who possessed potentially relevant information. We interviewed senior Agency management officials, including the DCI, the Deputy Director of Central Intelligence, the Executive Director, the General Counsel, and the Deputy Director for Operations. As new information developed, OIG re-interviewed several individuals.

Case 1:07-cv-05435-LAP Document 74-13 Filed 06/25/2008 Page 115 of 166

Appendix B
Page intentionally left blank

Appendix C

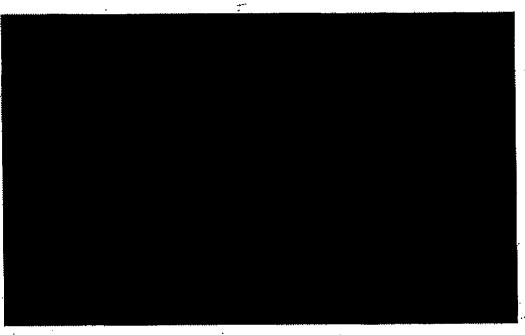
APPENDIX C PAGES 1 TO 18

Appendix D

APPENDIX D PAGES 1 TO 3

Appendix E

-TOP-SECRET

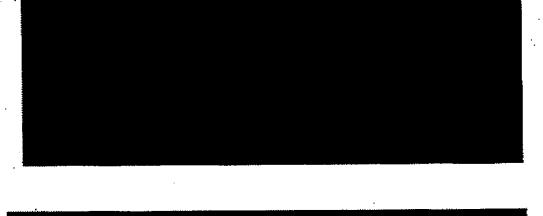


1. Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA

officers

may use
only Permissible Interrogation Techniques. Permissible
Interrogation Techniques consist of both (a) Standard
Techniques and (b) Enhanced Techniques.



TOP SECRET

Enhanced Techniques the water board,

TOP SECRET

APPENDIX E PAGES 3 TO 4

Appendix F

APPENDIX F **PAGES 1 TO 11**





COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001 – OCTOBER 2003)

7 May 2004

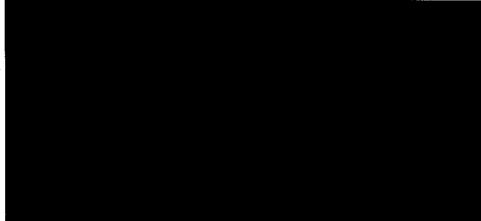


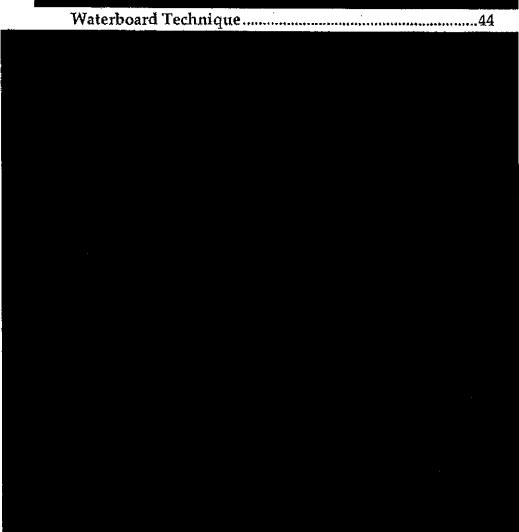
TOP SECRET

TABLE OF CONTENTS

Page
INTRODUCTION1
SUMMARY2
BACKGROUND9
DISCUSSION11
GENESIS OF POST 9/11 AGENCY DETENTION AND INTERROGATION ACTIVITIES
THE CAPTURE OF ABU ZUBAYDAH AND DEVELOPMENT OF EITS12
DOJ LEGAL ANALYSIS16
Notice to and consultation with Executive and Congressional officials23
Videotapes of Interrogations36







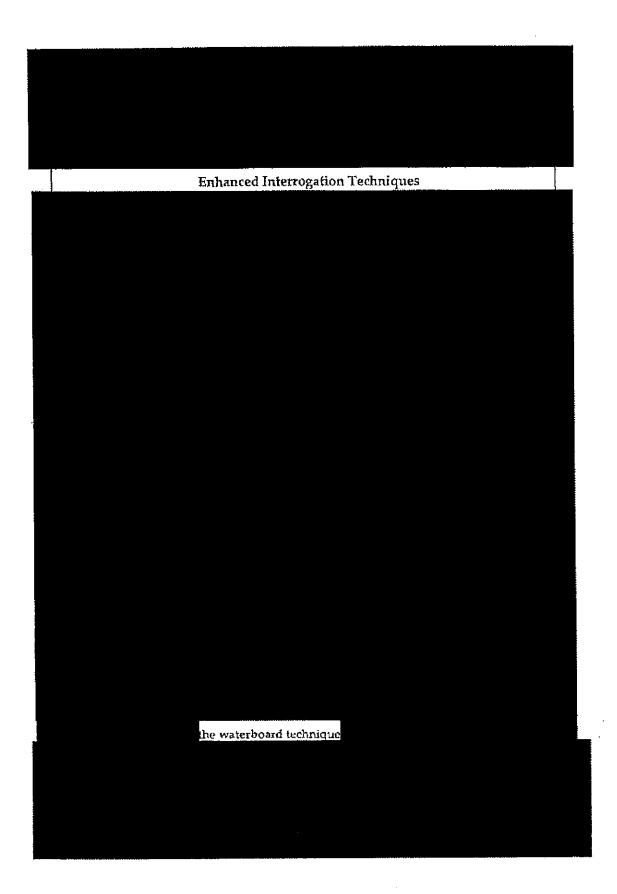
ii

TOP SECRET

·
Effectiveness85
POLICY CONSIDERATIONS AND CONCERNS REGARDING THE DETENTION AND INTERROGATION PROGRAM
Policy Considerations92
ENDGAME95
CONCLUSIONS100
RECOMMENDATIONS106
APPENDICES
A. Procedures and Resources
B. Chronology of Significant Events

TABLE OF CONTENTS PAGE IV

PAGES 1 TO 14



15

TOP SECRET

TOP SECRI

DO LEGAL ANALYSIS

36. (TS

The ensuing legal opinions focus on the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (Torture Convention),15 especially as implemented in the U.S. criminal code, 18 U.S.C. 2340-2340A.

37. (U//FOUO) The Torture Convention specifically prohibits "torture," which it defines in Article 1 as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctión. [Emphasis added.]

Article 4 of the Torture Convention provides that states party to the Convention are to ensure that all acts of "torture" are offenses under their criminal laws. Article 16 additionally provides that each state party "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to acts of torture as defined in Article 1."

^{15 (}U//FOUO) Adopted 10 December 1984, S. Treaty Doc. No. 100-20 (1988) 1465 U.N.T.S. 85 (entered into force 26 June 1987). The Torture Convention entered into force for the United States on 20 November 1994.

 (U//FOUO) The Torture Convention applies to the United States only in accordance with the reservations and understandings made by the United States at the time of ratification. 16 As explained to the Senate by the Executive Branch prior to ratification:

Document 74-13

Article 16 is arguably broader than existing U.S. law. The phrase "cruel, inhuman or degrading treatment or punishment" is a standard formula in international instruments and is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. To the extent the phrase has been interpreted in the context of those agreements, "cruel" and "inhuman" treatment or punishment appears to be roughly equivalent to the treatment or punishment barred in the United States by the Fifth, Eighth and Fourteenth Amendments. "Degrading" treatment or punishment, however, has been interpreted as potentially including treatment that would probably not be prohibited by the U.S. Constitution. ·[Citing a ruling that German refusal to recognize individual's gender change might be considered "degrading" treatment.] To make clear that the <u>United States construes the phrase to be</u> coextensive with its constitutional guarantees against cruel, unusual; and inhumane treatment, the following understanding is recommended:

"The United States understands the term 'cruel, inhuman or degrading treatment or punishment,' as used in Article 16 of the Convention, to mean the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States."17 [Emphasis added.]

^{16 (}U) Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980). The United States is not a party to the Vienna Convention on treaties, but it generally regards its provisions as customary international law.

^{17 (}U//FOUO) S. Treaty Doc. No. 100-20, at 15-16.

39. (U//FOUO) In accordance with the Convention, the United States criminalized acts of torture in 18 U.S.C. 2340A(a), which provides as follows:

Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

The statute adopts the Convention definition of "torture" as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." "Severe physical pain and suffering" is not further defined, but Congress added a definition of "severe mental pain or suffering:"

[T]he prolonged mental harm caused by or resulting from-

- (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
- (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (C) the threat of imminent death; or
- (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality....¹⁹

These statutory definitions are consistent with the understandings and reservations of the United States to the Torture Convention.

^{18 (}U//FOUO) 18 U.S.C. 2340(1).

¹⁹ (U//FOUO) 18 U.S.C. 2340(2).

40. (U//FOUO) DoJ has never prosecuted a violation of the torture statute, 18 U.S.C. §2340, and there is no case law construing its provisions.

issues under U.S. and international law to DoJ's OLC in the summer of 2002 and received a preliminary summary of the elements of the An unclassified 1 August 2002

OLC legal memorandum set out OLC's conclusions regarding the proper interpretation of the torture statute and concluded that "Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering whether mental or physical."20 Also, OLC stated that the acts must be of an "extreme nature" and that "certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture." Further describing the requisite level of intended pain, OLC stated:

Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.21

OLC determined that a violation of Section 2340 requires that the infliction of severe pain be the defendant's "precise objective." OLC also concluded that necessity or self-defense might justify interrogation methods that would otherwise violate Section 2340A.22 The August 2002 OLC opinion did not address whether any other provisions of U.S. law are relevant to the detention, treatment, and interrogation of detainees outside the United States.23

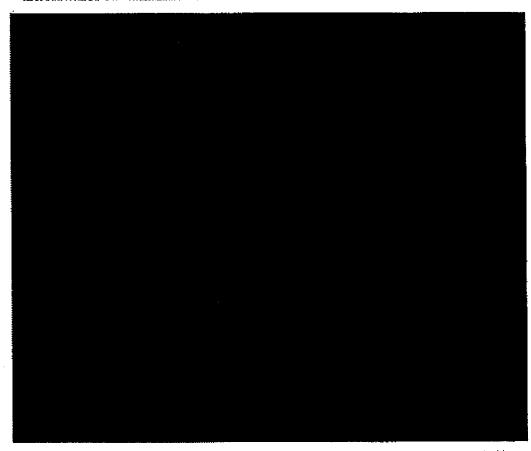
^{20 (}U//FOUO) Legal Memorandum, Re: Standards of Conduct for Interrogation under 18 U.S.C. 2340-2340A (1 August 2002).

^{21 (}U//FOUO) Ibid., p. 1.

²² (U//FOUO) Ibid., p. 39.

^{23 (}U//FOUO) OLC's analysis of the torture statute was guided in part by judicial decisions under the Torture Victims Protection Act (TVPA) 28 U.S.C. 1350, which provides a tort remedy for victims of torture. OLC noted that the courts in this context have looked at the entire course

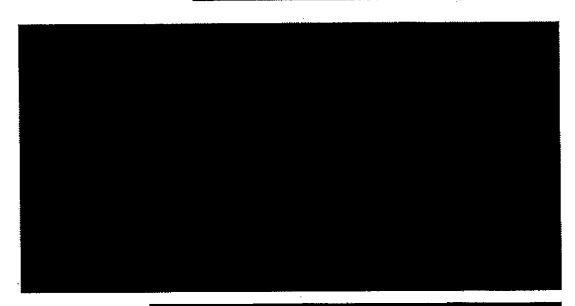
41. (U//FOUO) A second unclassified 1 August 2002 OLC opinion addressed the international law aspects of such interrogations.²⁴ This opinion concluded that interrogation methods that do not violate 18 U.S.C. 2340 would not violate the Torture Convention and would not come within the jurisdiction of the International Criminal Court.



of conduct, although a single incident could constitute torture. OLC also noted that courts may be willing to find a wide range of physical pain can rise to the level of "severe pain and suffering." Ultimately, however, OLC concluded that the cases show that only acts "of an extreme nature have been redressed under the TVPA's civil remedy for torture." White House Counsel Memorandum at 22 - 27.

24 (U//FOUO) OLC Opinion by John C. Yoo, Deputy Assistant Attorney General, OLC (1 August 2002).

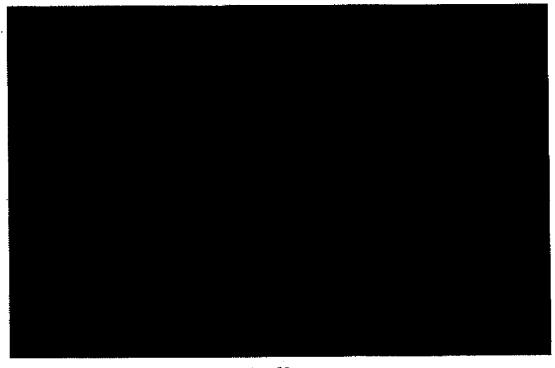
PAGES 21 TO 22



45. (TS

The DCI

briefed appropriate senior national security and legal officials on the proposed EITs. In the fall of 2002, the Agency briefed the leadership of the Congressional Intelligence Oversight Committees on the use of both standard techniques and EITs.



23

דיזמיי/זם מסיי.

PAGES 24 TO 35

interrogators administered the waterboard to
Al-Nashiri

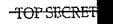
Videotapes of Interrogations

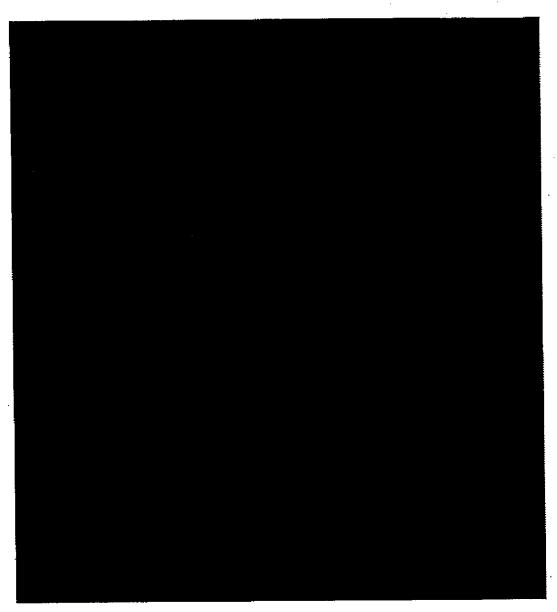
decided to videotape the interrogation sessions.

An OGC attorney reviewed the videotapes

78. (TS OIG reviewed the videotapes in May 2003

PAGES 37 TO 43





Waterboard Technique

99. (TS
interrogators used the waterboard on Khalid Shaykh Muhammad



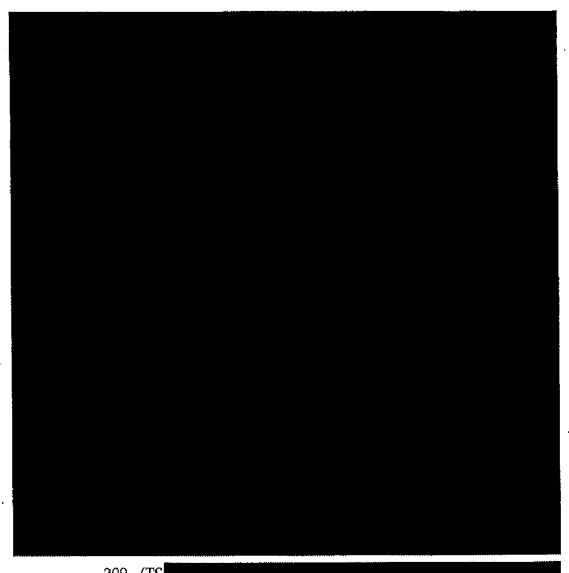


100. (TS Cables indicate that Agency interrogators applied the waterboard technique to Khalid Shaykh Muhammad



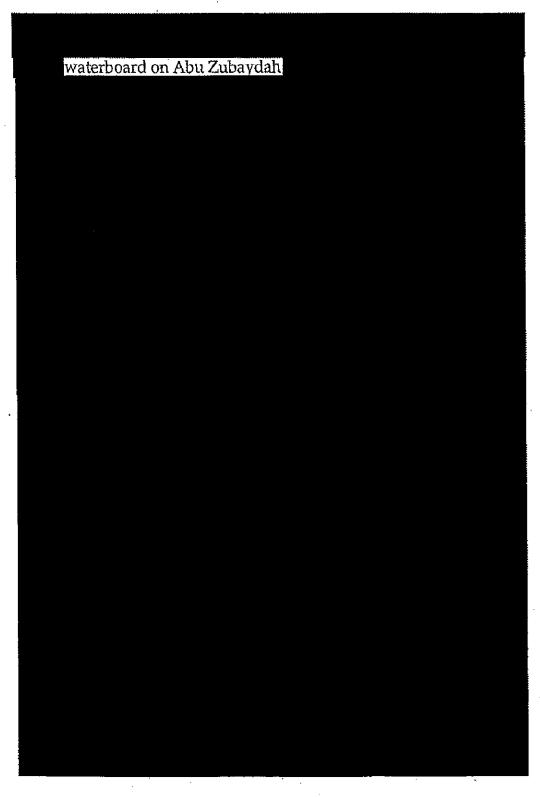


TOP SECRET



209. (TS waterboard session of Abu Zubaydah.

84

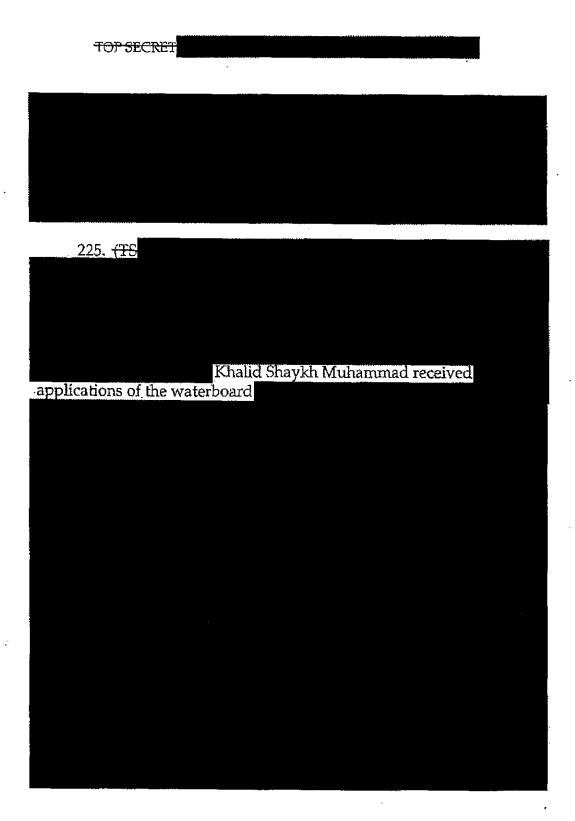


85

SPECIAL REVIEW

PAGES 86 TO 89

	TOP SECRET			
	222. (TS inees: Ab <u>u Zuba</u> nammad.			n used on three haykh
арр	223. (TS lied the waterboa	rd to Abu Zubayo	lah	Interrogators



TOP SECRET

Policy Considerations

227. (U//FOUO) Throughout its history, the United States has been an international proponent of human rights and has voiced opposition to torture and mistreatment of prisoners by foreign countries. This position is based upon fundamental principles that are deeply embedded in the American legal structure and jurisprudence. The Fifth and Fourteenth Amendments to the U.S. Constitution, for example, require due process of law, while the Eighth Amendment bars "cruel and unusual punishments."

228. (U//FOUO) The President advised the Senate when submitting the Torture Convention for ratification that the United States would construe the requirement of Article 16 of the Convention. to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture" as "roughly equivalent to" and "coextensive with the Constitutional guarantees against cruel, unusual, and inhumane treatment."81 To this end, the United States submitted a reservation to the Torture Convention stating that the United States considers itself bound by Article 16 "only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th, 8th and/or 14th Amendments to the Constitution of the United States." Although the Torture Convention expressly provides that no exceptional circumstances whatsoever, including war or any other public emergency, and no order from a superior officer, justifies torture, no similar provision was included regarding acts of "cruel, inhuman or degrading treatment or punishment."

^{81 (}U//FOUO) See Message from the President of the United States Transmitting the Convention Against Toxture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Sen. Treaty Doc. 100-20, 100th Cong., 2d Sess., at 15, May 23, 1988; Senate Committee on Foreign Relations, Executive Report 101-30, August 30, 1990, at 25, 29, quoting summary and analysis submitted by President Ronald Reagan, as revised by President George H.W. Bush.

229. (U//FOUO) Annual U.S. State Department Country Reports on Human Rights Practices have repeatedly condemned harsh interrogation techniques utilized by foreign governments. For example, the 2002 Report, issued in March 2003, stated:

[The United States] have been given greater opportunity to make good on our commitment to uphold standards of human dignity and liberty . . . [N]o country is exempt from scrutiny, and all countries benefit from constant striving to identify their weaknesses and improve their performance . . . [T]he Reports serve as a gauge for our international human rights efforts, pointing to areas of progress and drawing our attention to new and continuing challenges.

In a world marching toward democracy and respect for human rights, the United States is a leader, a partner and a contributor. We have taken this responsibility with a deep and abiding belief that human rights are universal. They are not grounded exclusively in American or western values. But their protection worldwide serves a core U.S. national interest.

The State Department Report identified objectionable practices in a variety of countries including, for example, patterns of abuse of prisoners in Saudi Arabia by such means as "suspension from bars by handcuffs, and threats against family members, . . . [being] forced constantly to lie on hard floors [and] deprived of sleep " Other reports have criticized hooding and stripping prisoners naked.

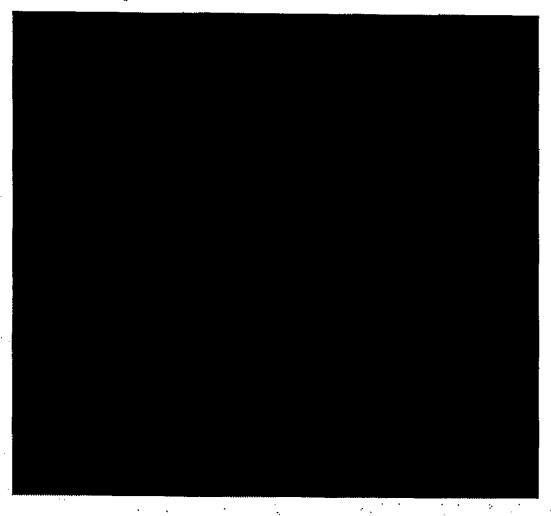
230. (U//FOUO) In June 2003, President Bush issued a statement in observance of "United Nations International Day in Support of Victims of Torture." The statement said in part:

The United States declares its strong solidarity with torture victims across the world. Torture anywhere is an affront to human dignity everywhere. We are committed to building a world where human rights are respected and protected by the rule of law.

Freedom from torture is an inalienable human right . . . Yet torture continues to be practiced around the world by rogue regimes whose cruel methods match their determination to crush the human spirit

Notorious human rights abusers . . . have sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors

The United States is committed to the worldwide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment....



SPECIAL REVIEW

PAGES 95 TO 109

Appendix A

PROCEDURES AND RESOURCES

- 1. (TS) A team, led by the Deputy Inspector General, and comprising the Assistant Inspector General for Investigations, the Counsel to the Inspector General, a senior Investigations Staff Manager, three Investigators, two Inspectors, an Auditor, a Research Assistant, and a Secretary participated in this Review.
- 2. (TS OIG tasked relevant components for all information regarding the treatment and interrogation of all individuals detained by or on behalf of CIA after 9/11. Agency components provided OIG with over 38,000 pages of documents. OIG conducted over 100 interviews with individuals who possessed potentially relevant information. We interviewed senior Agency management officials, including the DCI, the Deputy Director of Central Intelligence, the Executive Director, the General Counsel, and the Deputy Director for Operations. As new information developed, OIG re-interviewed several individuals.

.

Case 1:07-cv-05435-LAP Document 74-13 Filed 06/25/2008 Page 156 of 166

Appendix B
Page intentionally left blank

Appendix C

SPECIAL REVIEW

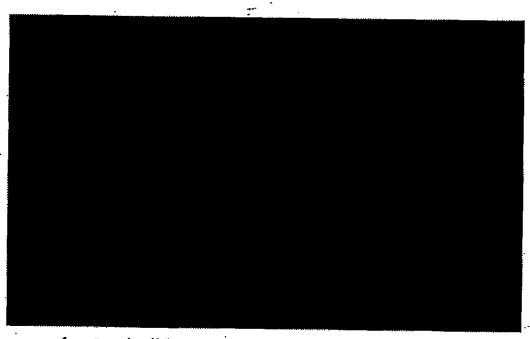
APPENDIX C PAGES 1 TO 18

Appendix D

SPECIAL REVIEW

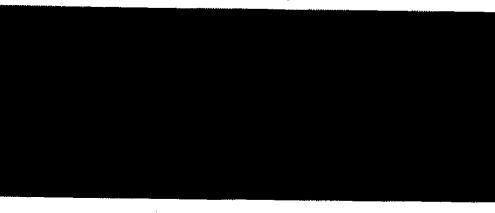
APPENDIX D PAGES 1 TO 3

Appendix E



1. Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA officers may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques of both (a) Standard Techniques and (b) Enhanced Techniques.



TOP SECRET

-TOF-SECRIE

Enhanced Techniques the water board,

POP SECRET

SPECIAL REVIEW

APPENDIX E PAGES 3 TO 4

Appendix F

SPECIAL REVIEW

APPENDIX F PAGES 1 TO 11